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Laws on lethal domestic violence should be reviewed – nationally

The law's response to lethal domestic violence in Australia raises complex issues. It requires a delicate balance to be struck between ensuring a just response to those who kill in response to prolonged family violence while simultaneously ensuring that those who kill an intimate partner in unmeritorious circumstances are not minimised, excused or justified by the court system.

But given the divergent law reform activity across Australia in recent years, a national review of legal responses to lethal domestic violence is undoubtedly needed.

A national review would allow each state and territory to learn from the reform experiences of their counterparts. While there are sentencing and legislative differences across jurisdictions, there are benefits in considering the range of reforms and the impacts in practice on the law's response to lethal domestic violence.

The 2010 review into family violence by the Australian Law Reform Commission and New South Wales Law Reform Commission began this process. However, since that review, the number of differing reforms implemented highlights the need for a follow-up review. This should evaluate to what extent the law's response to domestic violence has improved and where opportunities lie for future reform.
Divergent reforms

Debate surrounding the law's response to lethal domestic violence has led to significant reform activity over the last 20 years. This includes reforms to self-defence laws, the provocation defence, evidence reforms and most recently to the offence of defensive homicide in Victoria. Interestingly, while often motivated by like concerns, these changes have often taken different forms.

For example, in response to concerns surrounding the law of provocation's legitimisation of male-perpetrated intimate partner homicides, Victoria, Tasmania and Western Australia abolished the partial defence of provocation.

Reviewing the same law, a New South Wales parliamentary inquiry concluded in 2013 that the risk of a murder conviction for women who kill an abuser was too high without a “safety net” option of a provocation defence. Consequently, NSW retained a restricted version of the partial provocation defence.

Marking a third approach to reconsidering the law of provocation, South Australian MPs recently expressed concern about the law’s operation in “gay panic” cases. They are yet to consider how it applies in cases of men who kill a female intimate partner who attempted to leave the relationship or has allegedly been unfaithful. To date, such men continue to have a partial defence of provocation open to them.

The issue of domestic abuse has been all but absent from recent political debate on drug and alcohol-fuelled violence, despite alcohol abuse consistently emerging in national research as a precursor to domestic violence.

It is important that the conversation on how the law can better respond to alcohol-fuelled violence in and around night-time venues is widened to consider too how it can better respond to perpetrators of alcohol-fuelled violence in homes.

Pillars of a national review

Beyond reforming, abolishing and introducing legal categories, a national review of legal responses to domestic violence should be informed by three guiding principles.

First, the law must recognise the seriousness of lethal domestic violence. The community and Australia’s legal system have certainly come far in terms of adequately recognising the harms of domestic violence.

Despite this, it is still important for the law to create clear standards of acceptable and unacceptable behaviour. Within these standards, the use of violence by an intimate partner to abuse, intimidate, control and diminish the rights of a person must have no place.

Second, the law must provide an avenue through which a person's experiences of violence can be adequately heard and understood. Domestic violence advocates and scholars have long argued that women’s experiences of domestic abuse are often misunderstood by those operating within the courts, jury included.

Refreshingly, recent approaches to reform have sought to address exactly this. The most recent instance was the introduction of reforms in Victoria to increase juror understanding of the dynamics of family violence. The impact of these reforms requires monitoring. If effective, they should be introduced in other Australian jurisdictions.
Finally, the law must be reflective. As recent attempts to reform legal responses to lethal domestic violence reveal, solutions are not always forthcoming. Identified problems are rarely solved at first try.

Reflection is particularly important in the current political climate as governments are increasingly introducing reforms without consultation. Funding to domestic violence agencies has been cut. Legal aid funding cuts could also have dire impacts in family violence cases.

In this climate, we must not lose sight of an important goal – a criminal justice system that provides a just response to lethal domestic violence. After all, this is the category of homicide in Australia that singularly poses the biggest threat to women in the community.

The National Sexual Assault, Family & Domestic Violence Counselling Line – 1800 RESPECT (1800 737 732) – is available 24 hours a day, seven days a week for any Australian who has experienced, or is at risk of, family and domestic violence and/or sexual assault.

Read the other articles in The Conversation’s Domestic Violence in Australia series here.